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# Report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112

## Rationalization of the work of the Commission

GE.98-05289 (E)

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## EXECUTIVE SUMMARY

In its decision 1998/112 the Commission on Human Rights decided to appoint the Bureau of its fifty-fourth session to conduct a review of the mechanisms of the Commission aimed at enhancing the effectiveness of those mechanisms. Accordingly, the Bureau solicited written proposals and conducted broad consultations, and hereby presents to the Commission its recommendations, supporting observations, and some related proposals for consideration by the High Commissioner for Human Rights or, in some cases, by the Secretary-General.

All of these conclusions are inspired by a simple guiding purpose: to enhance the capacity of the United Nations to promote and protect internationally recognized human rights and contribute to the prevention of their violation. This purpose can and should be approached in dispassionate, technical terms, by organizing and managing the Commission's mechanisms on the basis of the highest standards of objectivity and professionalism, as free as possible of extraneous political influences; but it also requires political will, for the effectiveness of Commission mechanisms ultimately rests on the responsibility of all Governments to cooperate fully with them.

Another key will be to redress the critical inadequacy of resources for the United Nations human rights programme. This will necessitate the development by the High Commissioner for Human Rights of an appropriate strategy to secure the needed resources in the budget exercise for the 2000-2001 biennium; but, in deliberating on this review, the Commission also bears responsibility to ensure that its mechanisms represent a defensible and efficient use of available resources (chap. I, paras. 1-16).

The special procedures have been one of the Commission's major achievements, constitute an essential cornerstone of United Nations efforts to promote and protect human rights, and should accordingly be preserved, strengthened, and provided all necessary support and cooperation (chap. II, paras. 17-50).

In selecting mandates (sect. A, paras. 19-24):

- There is some scope for rationalizing and strengthening the current network of thematic mechanisms: some adjustments to this end are accordingly recommended for consideration by the Commission (**recommendation 1**).

- The Commission also needs the capability to create appropriate country-specific mechanisms. Governments could help improve the climate for such activities by eschewing extraneous political considerations and pledging cooperation in deliberations on all situations, including their own. The Commission should also make full use of information and advice from its thematic mechanisms and other United Nations human rights institutions. More in-depth future consideration should be given to the appropriateness and possibilities of establishing additional or alternative procedures for initiating country-specific proceedings.

Regarding the roles and tasks (sect. B, paras. 25-27) of special procedures:

- The mandate of each mechanism can only be decided case-by-case in light of the requirements of the situation, but effective promotion and protection of human rights can rarely be achieved without a combination of ingredients, including: frank and genuine dialogue; the identification of opportunities for advice and assistance to willing Governments; and objective monitoring and fact-finding, which is an essential starting point and sine qua non for the work of the special procedures.

- The vital urgent appeals process should be strongly supported by OHCHR, and the Chair of the Commission should assist when necessary in securing governmental responses (**recommendation 2**).

- Special procedures must also observe the Commission's guidance on cross-cutting issues, and need effective backing in this regard from OHCHR.

In selecting officeholders and setting their basic terms and conditions (sect. C, paras. 28-37), the paramount considerations should be personal and technical qualifications, and the independence, objectivity and overall integrity of the mechanisms. With this in mind, it is suggested, inter alia:

- That appointments generally be made by the Commission's Chair (**recommendation 3**) assisted by a roster maintained by OHCHR;

- That the Commission recommend measures to ensure prompt approval by the Economic and Social Council of all mandates (**recommendation 4**);

- That thematic mandates continue to be set and renewed for three-year terms (**recommendation 5**);

- That individual tenure in a given mandate be no more than six years (**recommendation 6**);

- That States should ensure full respect for all privileges and immunities of mandate holders and that the Secretary-General review United Nations practice regarding the issuance of United Nations laissez-passers to Commission mechanisms;

- That the Secretary-General expedite work on an appropriate code of conduct;

- That measures be taken to ensure effective and timely compensation and administrative support of special procedures.

The effective discharge of the mandates of the special procedures mandates (sect. D, paras. 38-45) turns largely on their ability to work

effectively with a range of actors. Key in this regard is the application and development of best practices, which should be reflected in the manual for special procedures mechanisms. Concerning the special procedures:

- In relation to non-governmental actors (media, NGOs, individuals, alleged victims of human rights violations), there is need for: grass-roots awareness about special procedures; protection against adverse consequences for dealings with special procedures; appropriate information verification efforts; and systematic acknowledgement of receipt of communications.

- Governments are encouraged to respond positively to requests from mechanisms to conduct missions when so requested, and to guarantee the conditions necessary to ensure an effective visit. The Commission should conduct regular, focused and systematic reviews of serious incidents or situations involving a failure or denial of cooperation by Governments (**recommendation 7**). Whenever possible, Governments should be enabled to review and comment on the reports of special procedures prior to their finalization.

- In dealings among special procedures and with other United Nations and international entities, every possible measure should be taken to strengthen and expand the exchange of information and coordination of activities. Cultivating such efforts and otherwise providing professional and administrative support for special procedures is principally the responsibility of the High Commissioner for Human Rights - a number of observations and proposals in this regard are addressed to her for consideration.

There is a crucial need for more timely, user-friendly special procedure reports (sect. E, paras. 46-47). To this end, the report recommends (**recommendation 8**):

- Timely submission of reports to the Secretariat (by the end of December) and advance distribution of original language, unedited versions;

- Preparation of structured executive summaries reflecting the key elements for the Commission's consideration, to be given highest priority by the Languages Service and issued well before each session in a compilation of all executive summaries.

There is an urgent need for more serious, focused and systematic utilization and follow up of the reports of special procedures, their recommendations and related Commission conclusions (sect. F, paras. 48-50). With this in mind:

- The Commission should conduct a structured dialogue on each mechanism's report, organized around the elements of the executive summaries, and with the Governments concerned afforded full opportunity to explain their positions. This approach should be implemented as far as practicable for the Commission's fifty-fifth session (**recommendation 9**).

- A mid-cycle report on implementation and follow-up should be issued each fall, providing the focus for special Bureau review meetings to conduct dialogues with concerned Governments and consider how to assist in advancing the follow-through process (**recommendation 10**).

- Every appropriate effort should be made to ensure effective dissemination of the results of the work of the special procedures, another principal responsibility of the High Commissioner.

While recognizing serious concerns about the efficacy and efficiency of the current 1503 procedure, the Bureau has concluded that an effective global communications process could continue to provide an important channel of redress, especially for groups and individuals in countries not party to treaty-based communications procedures and members of vulnerable groups, and would ensure an avenue to address human rights concerns not fully covered by the thematic mechanisms. There would also be value in maintaining the option of a confidential process - insofar as this helps to secure constructive engagement by Governments concerned in genuine dialogue and cooperation with the Commission. Achieving these objectives effectively and efficiently, however, would require a significant reform of the existing procedure.

With these considerations in mind, the report recommends (**recommendation 11**):

- Assignment of responsibility for selecting situations for Commission consideration to a single body, a Committee on Situations, comprised of five independent experts to meet twice yearly, first to decide which communications to refer to States for clarification and second, with the benefit of further information from the Government concerned and other relevant sources, to determine which situations to refer to the Commission;

- That the Commission's deliberations, conducted in two phases, focus on meaningful dialogue with the States concerned, culminating in decisions on appropriate action (chap. III, paras. 51-54).

Given the important contribution that the Sub-Commission has made to efforts by the United Nations in the promotion and protection of human rights, the Bureau is convinced that an institution of this type can continue to play an important role. However, as successive, incremental efforts at improving the Sub-Commission's methods have not resolved some very fundamental concerns about this institution, fundamental reforms are needed to address these concerns. These reforms should preserve and enhance the Sub-Commission's unique strengths as a body of independent experts and the opportunities it offers as a forum for concerned groups to bring their human rights ideas and concerns to the attention of the international community. The report thus recommends (**recommendation 12**):

- Renaming the body "the Sub-Commission on the Promotion and Protection of Human Rights";

- Reducing its size to 15 members, selected on the basis of their expert qualifications;

- Reducing its annual sessions to two weeks;

- Focusing its efforts on the elaboration of studies and research entailing a thorough peer-review process culminating in analytical reports to the Commission, rather than negotiated resolutions;

- Maintaining its annual debate on human rights violations in all parts of the world, to be reflected in an analytical report to the Commission rather than negotiated resolutions;

- Continuation of the inter-sessional Working Groups on Minorities and on Indigenous Populations, the latter until such time as the question of its future status is resolved in the context of the Commission's deliberations on a permanent forum for indigenous people;

- That the Commission devise a transitional process to bring these reforms fully into effect for the fifty-second session of the Sub-Commission in the year 2000 (chap. IV, paras. 55-56).

The review highlighted two particular concerns about the operation of Commission standard-setting working groups: the need to ensure that decisions to undertake any standard-setting exercise are founded on clear purposes and effective preparatory work; and the need for more efficient processes and for overcoming undue obstacles to the achievement of widely accepted and urgently needed human rights instruments. With these considerations in mind, the report recommends (**recommendation 13**):

- That, where the needed preparatory groundwork has not otherwise been laid, standard-setting exercises be preceded by work by the Sub-Commission on a study and draft text of the instrument envisaged;

- The establishment of a specific time-frame for completion of the working groups' task, not to exceed five years, with any extension granted only following a period of reflection (e.g. one or two years);

- That all working group chairs (whose mandates should be co-terminous with that of the working group) have standing authority to undertake inter-sessional consultations aimed at advancing the working group's task (chap. V, paras. 57-61).

# I. INTRODUCTION

## A. Mandate

1. This report is submitted to the fifty-fifth session of the Commission on Human Rights by the Bureau of the fifty-fourth session (hereinafter "the Bureau") pursuant to the Commission's decision 1998/112, which reads as

follows: "At its 60th meeting, on 24 April 1998, the Commission on Human Rights, with a view to enhancing the effectiveness of the mechanisms of the Commission on Human Rights, decided, without a vote, to appoint the Bureau to undertake a review of the mechanisms of the Commission with a view to making recommendations to the Commission at its fifty-fifty session."

B. Activities undertaken pursuant to the mandate

2. In its efforts to fulfil this mandate in a manner affording all interested parties ample opportunity to advance, and exchange views on, suggestions for enhancing the Commission's mechanisms, the Bureau has undertaken the following steps during the period May-December 1998:

25-29 May: in Geneva, Bureau members held meetings among themselves to discuss the approach to the review and with special rapporteurs and representatives, independent experts and chairpersons of working groups of the special procedures on the occasion of their annual meeting.

15 June: at the Bureau's request, the secretariat of the Commission provided preliminary information on plans for the review and issued an invitation to Governments, United Nations organs and specialized agencies, intergovernmental and non-governmental organizations to submit written proposals for consideration during the review.

22-24 June: in Ottawa, Canada, at the invitation of the organizers, two members of the Bureau attended the International NGO Forum "Vienna plus five" as observers, and provided a briefing on the review and orally exchanged views with participants.

20 July: in New York, during the substantive session of ECOSOC, one Bureau member provided a briefing on the approach to the review, and exchanged views with representatives of Governments and NGOs.

28 July: at the Bureau's request, the secretariat circulated an informal paper, supplemented by an addendum on 10 August, containing a summary of the main proposals and comments submitted by Governments and NGOs.

10-14 August: in Geneva, the Bureau held: a series of meetings among its members; private and public consultations with the members of the Sub-Commission during its fiftieth session; a meeting with the Task Force on Human Rights Mechanisms of the Office of the High Commissioner for Human Rights (OHCHR); and an intensive set of consultations - on 11 August with representatives of Governments, on 12 August with representatives of NGOs, followed on 13 August by an open meeting with government and NGO representatives to take stock of progress to date in the review.

19 October: in New York and via video-link to Geneva, members of the Bureau met to discuss a first draft of the report.

30 November - 2 December: in Geneva, the Bureau held meetings to discuss a second draft of the report, consulted with the Task Force and

other representatives of OHCHR, and provided separate briefings to government representatives and to representatives of NGOs on the major outlines of the conclusions reached by the Bureau.

17 December: agreement was confirmed among all Bureau members on the final text of the report which was then submitted to OHCHR for immediate processing and for distribution of advance copies of the original language version to all interested parties.

3. In response to the above-noted invitation, the following Governments submitted written comments and proposals for consideration in connection with the review: Argentina, Australia, Austria, Brazil, Croatia, Cuba, Denmark, Egypt, El Salvador (on behalf of Central American countries), Ethiopia, Finland, Ireland, France, Japan, Germany, Netherlands, Norway, Portugal, Republic of Korea, Qatar, Senegal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America, as well as the Asian Group as a whole. The Food and Agriculture Organization of the United Nations (FAO) and the United Nations Fund for Populations Activities (UNFPA) also commented.

4. In response to the same invitation, the following non-governmental organizations also submitted written observations and proposals: Afro-Asian People's Solidarity Organization, American Association of Jurists and Centre Europe-Tiers Monde (joint statement), Amnesty International, Association catholique internationale de services pour la jeunesse féminine, Association for the Prevention of Torture, Baha'i International Community, Canadian Council for Refugees, Carter Center, Centre for Women's Global Leadership, Friends World Committee for Consultation (Quakers), Human Rights Internet, Human Rights Watch, International Centre for Human Rights and Democratic Development, International Federation of Human Rights Leagues, International League for Human Rights and Jacob Blaustein Institute for the Advancement of Human Rights.

## C. Scope and context of review

5. Principal focus. During consultations leading to decision 1998/112, and on the occasion of its adoption, the Chairman stated that this review would address all bodies and mechanisms that report to the Commission, that is: (a) all the Commission's special procedures (special rapporteurs and representatives, independent experts, relevant working groups); (b) the confidential procedure established by ECOSOC in resolution 1503 (XLVIII); (c) the Sub-Commission on the Prevention of Discrimination and Protection of Minorities; and (d) working groups established by the Commission to conduct standard-setting activities. Written and oral submissions to the review included a wide variety of observations and proposals relating to the workings of these four different areas, which are accordingly addressed in separate chapters (II through V) of this report.

6. Broader questions. On the occasion of the adoption of decision 1998/112, the Chairman also stated that consideration would be given to all other proposals that had been made during the fifty-fourth session in connection with the work of the Commission, including the elements contained in the withdrawn draft resolution contained in document E/CN.4/1998/L.2. In

some instances, those proposals (like others submitted by contributors in the course of the review) included suggestions going beyond the strict operation of the aforementioned subsidiary entities, touching on issues such as the pattern of meetings or working methods of the Commission itself. Having considered those proposals, the Bureau has concluded that the limited deliberations to date do not provide sufficient foundation for immediate or definitive recommendations on such questions. At the same time, the Bureau recognizes that some of its observations and recommendations regarding the Commission's mechanisms may have implications for the Commission's broader working methods and organization of work. Consequently, the Bureau encourages sustained efforts in this area, building on the progress achieved during the fifty-fourth session on such matters as agenda reform, and in the spirit of the commitment expressed by the World Conference on Human Rights to a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights.

7. Excluded matters. The Bureau also approached this exercise with a clear understanding, confirmed during the course of the review, that its mandate did not extend to making recommendations on fundamental questions of mandate or structure of other key components of the United Nations human rights machinery, such as the High Commissioner for Human Rights (whose authority derives from a resolution of the General Assembly) and the United Nations human rights treaty bodies (which are governed by the terms of the respective treaties). On the other hand, it was clear that the Commission's mechanisms do not operate in a vacuum and that their effectiveness in many respects depends on the manner in which they interact with such other entities. Consequently, some of the observations in this report may be of relevance in this regard, and some separate "proposals" are elaborated particularly for consideration by the High Commissioner (in the framework of her responsibilities mandated in General Assembly resolution 48/141) or in some cases by the Secretary-General.

8. Further in connection with the High Commissioner's responsibilities, the Bureau was also conscious of the mandates the Secretary-General has assigned to her in the context of his report, entitled "Renewing the United Nations: A Programme for Reform" (A/51/950 and Add.1-7 and Corr.1). The Bureau has therefore maintained close contact with the High Commissioner and her office with a view to ensuring that their respective efforts are mutually supportive and contribute to the common goal of strengthening the effectiveness of the United Nations in promoting and protecting human rights. In this connection, the Bureau is most grateful for the support and advice provided by OHCHR in the course of this review, and it hopes that the proposals directed to the High Commissioner will be helpful to her in meeting the challenges arising from her broad responsibilities.

## D. General considerations

### 1. Factors underpinning the decision to conduct a review

9. The Commission's decision to undertake this review reflected a widely held view that the time had come for a comprehensive assessment of the workings of the Commission's subsidiary machinery. The basic mandate of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

dates to 1947 and its composition was last amended in 1968. The Commission's confidential procedure for dealing with communications relating to violations of human rights and fundamental freedoms is governed by a resolution adopted by the Economic and Social Council in 1970 - significantly predating the establishment of other current Commission procedures and practices for addressing human rights violations. Finally, the intricate network of special procedures which today plays such a central role in the work of the Commission is itself the product of a series of separate resolutions or decisions adopted over a period of some 30 years.

10. The Commission, and the cause of human rights, have been well served by this incremental approach which has enabled the United Nations to adapt continuously to emerging needs and problems. At the same time, the size and the complexity of the system and the accelerating pace of its growth in response to constantly emerging new demands have given rise to increasing concerns about the coherence and overall effectiveness of the Commission's mechanisms, and have led to growing strains on the Secretariat support structure for the United Nations human rights programme. The Commission's decision to undertake this review reflected a recognition that such concerns could only be addressed by taking a careful look at its network of subsidiary mechanisms as a whole.

## 2. Guiding purposes

11. While there was a strong consensus on the timeliness of this review, it was also emphasized by many contributors, and the Bureau concurs, that it is crucial at the outset to have a clear understanding or "vision" of the basic goals or purposes that should guide the review. The task of agreeing on an appropriate formulation was particularly influenced by three factors. First, it was facilitated by the unambiguous terms of decision 1998/112 which envisaged a review aimed at "enhancing the effectiveness" of the mechanisms of the Commission. Second, the contributions of all participants to the review reflected overwhelming unity on the critical importance of strengthening mechanisms: this was repeatedly emphasized both by Governments determined to fulfil their commitments on human rights and by NGOs and representatives of victims of human rights abuses for whom the Commission's mechanisms uniquely embody the international community's concern and action on their behalf. Third, there were frequent reminders of the important contribution more effective mechanisms could make to enhancing the overall capacity of the United Nations to achieve all of its purposes. As stated by the Secretary-General in his above-noted Programme of Reform: "Developments over the past decade have underscored that human rights are inherent to the promotion of peace, security, economic prosperity and social equity."

12. Against this background, the Bureau was readily able to agree on a clear "mission statement" to guide its work in this exercise:

**OBSERVATION 1. The observations, proposals and recommendations contained in this report are inspired by a simple purpose: to enhance the capacity of the United Nations to promote and protect internationally recognized human rights and contribute to the prevention**

**of their violation. The validity and utility of each specific measure suggested herein, as well as the success of the entire exercise, should be assessed against this objective.**

3. Approach to advancing this purpose

13. In approaching its work, the Bureau has been strongly influenced by the broadly expressed desire that this review be conducted in an objective and dispassionate manner. While the inherently political character of many human rights issues cannot be denied, the Bureau agreed there is no value in, or foundation for, politicizing the deliberations of this review. To the contrary:

**OBSERVATION 2. An important key to advancing the above purpose will be to promote maximum depoliticization of the Commission's work by taking all possible measures to ensure that its mechanisms are established and operate on the basis of the highest standards of objectivity and professionalism, free of influence from extraneous political and other considerations. This report accordingly seeks to identify basic principles that should be respected, conditions that should be met, and procedures that should be put in place in order to achieve this aim.**

14. This said, there is no escaping the critical role that the exercise of political will must play in this effort. In this connection, perhaps the most frequently recurring theme to arise in the course of this review was the crucial importance of governmental cooperation with the Commission and its mechanisms. Given the prevalence of this theme, the following observation underpins many of the other conclusions that follow:

**OBSERVATION 3. The essential foundation on which the effectiveness of the Commission and its mechanisms rests is the responsibility of all Governments to cooperate fully with those mechanisms.**

15. This responsibility has important legal underpinnings, rooted in Articles 55 and 56 of the Charter of the United Nations according to which all States Members of the United Nations pledge themselves to cooperate with the Organization in promoting respect for human rights. But the effectiveness of the Commission, and the success of this review exercise, will ultimately turn on the political will of governments to fulfil this pledge. This should not present obstacles if all concerned hold to the commitment they have expressed during the course of the review to strengthening the Commission's mechanisms.

4. Resource considerations

16. Another theme that attracted much attention throughout the review was the crucial role of resources to support the work of the Commission's mechanisms. It has been repeatedly emphasized that this is not a "budget-driven" exercise, but rather one impelled, as noted above, by the purpose of strengthening the capacity of the United Nations to promote and protect human rights. During the past year, both the Commission and the Economic and Social Council recognized the inadequacy of the resources currently available to OHCHR to fulfil its responsibilities and appealed to the Secretary-General and the General Assembly to take urgent action to

redress this imbalance. In its resolution 53/167, the General Assembly ratified these appeals. The critical importance of this issue was brought into particularly stark relief in a wide range of submissions and discussions during the review. Meaningful follow-through on these clear pronouncements from the relevant intergovernmental bodies will be essential if this review is to achieve its purposes. Consequently:

**PROPOSAL 1. The Bureau proposes that, as part of the response to the recent pronouncements of the Commission on Human Rights, Economic and Social Council and United Nations General Assembly, the High Commissioner for Human Rights, in concert with the Secretary-General, develop an appropriate strategy and concrete action plan to secure, in the course of the planning exercise for the 2000-2001 biennium budget and beyond, the regular budget resources needed to ensure the effective implementation of the measures envisaged in this report. The Bureau further urges that, where measures recommended in this report entail savings in conference servicing expenses in connection with the Commission's mechanisms, the Secretary-General take the necessary steps for the transfer of those savings to the budget of OHCHR.**

**OBSERVATION 4. At the same time, the Commission bears a responsibility to ensure that the activities of its mechanisms represent a defensible and efficient use of scarce available resources. The Commission should therefore keep this consideration in mind in assessing its current mechanisms and the recommendations in this report.**

## II. SPECIAL PROCEDURES OF THE COMMISSION

17. Over the past three decades, and particularly since the early 1980s, the Commission has created a wide variety of mechanisms, known as "special procedures", charged either with scrutinizing human rights concerns and situations within specific countries (country-specific mandates) or with considering certain human rights issues or types of violations in all parts of the world (thematic mandates). The Sub-Commission has also contributed to developing this institutional landscape by establishing similar mandates from time to time, with the Commission's approval. (Current Commission and Sub-Commission mandates of this character are listed at annex I.)

**OBSERVATION 5. During the review, it was widely observed that the special procedures have been one of the Commission's major achievements and constitute an essential cornerstone of United Nations efforts to promote and protect internationally recognized human rights and contribute to the prevention of their violation. The review process thus occasioned a strong reaffirmation of the conclusion, in part II, paragraph 95, of the Vienna Declaration and Programme of Action (VDPA), that the system of special procedures should be preserved and strengthened, that they should have the necessary human and financial resources and that States should cooperate fully with them.**

18. Submissions to the review included a wealth of observations and ideas to these ends. With a view to ensuring systematic treatment of all important issues and suggestions raised, the following sections consider sequentially the different steps that must be taken and challenges that must be met, i.e.: (a) the selection of mandates; (b) the identification of roles and tasks of

the mechanisms; (c) the selection of officeholders and setting of their basic terms and conditions of service; (d) the discharge by the mechanisms of their mandates; (e) the preparation and circulation of the mechanisms' reports; and finally, (f) utilization of and follow-up on the work of the mechanisms.

## A. Identification/selection of mandates

### 1. Thematic mandates

19. As noted above, one factor underlying the decision to undertake this review was a concern about the proliferation of special procedure mandates, especially those of a thematic character, and about the consequent strains this has placed on the secretariat support system as well as on Governments called upon to respond to the mechanisms. At the same time, many have underlined the significant benefits that have accrued from the ad hoc manner in which the system of thematic special procedures has been developed in response to evolving needs, and have argued strongly against arbitrary cutbacks or limitations to the number of mandates.

20. Having considered various suggestions and information provided to it, the Bureau has concluded that:

**RECOMMENDATION 1. There is scope for rationalizing and strengthening the current network of mandates in order to ensure that all aspects of the Universal Declaration of Human Rights warranting attention are adequately addressed. The Bureau consequently recommends that the Commission consider the following proposals:**

**(a) Merge the mandates of the independent expert on structural adjustment and the Special Rapporteur on foreign debt;**

**(b) Convert the mandate of the Special Rapporteur on toxic wastes into that of Special Rapporteur on human rights and the environment;**

**(c) Transform the Working Group on Arbitrary Detention into a Special Rapporteur on arbitrary detention;**

**(d) Transform the Working Group on Enforced or Involuntary Disappearances into a Special Rapporteur on disappearances;**

**(e) Terminate the mandate of the Special Rapporteur on the use of mercenaries and recommend that this matter be henceforth considered directly in the General Assembly (Sixth Committee);**

**(f) Terminate the mandate of the Sub-Commission's Working Group on Contemporary Forms of Slavery and transfer those responsibilities which are not addressed by existing mechanisms to a new Special Rapporteur on contemporary forms of slavery.**

**(It should be emphasized that these recommendations go hand in hand with the proposal, reflected in paragraph 45 below, that steps be taken to ensure that all thematic mechanisms receive adequate professional support from OHCHR.)**

2. Country-specific mandates

21. Considering whether to establish a mechanism to give special attention to a specific country situation is one of the Commission's gravest and most sensitive responsibilities. Some participants in the review suggested that the current process in this regard is unduly confrontational and selective, and at odds with the need to promote cooperation in the field of human rights. The Bureau agrees that every effort should be made in the Commission's work to enhance cooperation and avoid inappropriate confrontation, and that there is scope for achieving greater progress to these ends in the working methods of the Commission. Any such efforts must, however, be consistent with the Commission's ultimate responsibility to promote respect for internationally recognized human rights.

**OBSERVATION 6. When confronted with established facts or credible allegations about serious violations of human rights, the Commission must have, among the options available to it, an effective capability to adopt a country-specific measure that is both credible and commensurate with the circumstances. Compelling vindication for this conclusion can be found in a number of countries that have been the object of such measures during difficult periods in the past and today maintain that such attention represented a crucial source of hope and support from the international community.**

22. In order to address specific country situations, the Commission's most commonly employed instruments have been resolutions or decisions and, more recently, statements issued by the Chair. The Bureau agrees that:

**OBSERVATION 7. Regardless of format (resolution, decision, Chair's statement) the Commission's actions regarding specific country situations should (as with all other issues) preferably be determined on the basis of consensus, if possible with the engagement of the country concerned.***

23. Since it may not prove possible in all cases to achieve consensus, and recognizing that no procedural device can guarantee such a result, the Bureau is nonetheless of the view that greater effort can and should be made to reduce the adversarial atmosphere and politicization surrounding specific country situations.

**OBSERVATION 8. Depoliticizing country proceedings could be achieved through a reduction in the tendency of Governments to perceive and to project difficult human rights issues through the prism of bilateral, regional or other bloc interests or as matters of "North-South" conflict. Furthermore, mutual confidence could be further enhanced if all States were to engage constructively and cooperatively in deliberations that relate to the promotion and protection of international human rights standards within their own countries.**

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* This observation is consistent with the statement by the Chair of the Commission of 18 April 1997, that, as far as possible, decision should be made and resolutions adopted without a vote.

**OBSERVATION 9. The Commission should make the fullest, most objective possible use of information and advice available to it from existing United Nations human rights institutions. In particular, it should give greater recognition to the role of its thematic mechanisms as authoritative sources of information and analysis about violations of human rights in all parts of the world. Likewise, full account should be taken of relevant information and views from other United Nations human rights entities, such as the High Commissioner for Human Rights and human rights treaty bodies, which possess responsibilities in this regard independent of the Commission.**

24. Reflecting concerns about the perceived selectivity or arbitrariness of the manner in which situations are first identified for attention (i.e. at the initiative of Governments), some contributors suggested that the power of initiative be entrusted to other actors such as the thematic mechanisms, a system of regional advisers or rapporteurs or the High Commissioner.

**OBSERVATION 10. The limited discussion to date does not, in the Bureau's view, provide a basis for concluding whether it would be possible or appropriate to establish procedures that might complement, curtail or replace the prerogative of Governments in initiating country-specific public proceedings. While recognizing the complexity and the sensitivity of this question, the Bureau believes that the Commission should give more in-depth consideration to this question in the future, taking into account, inter alia, the ideas and elements mentioned in this report.**

## B. Specifying the roles and tasks of the mechanisms

### 1. Multiple, interrelated tasks: monitoring/ fact-finding, dialogue, assistance

25. The review process revealed considerable interest in the question of the roles and tasks performed by special procedures mechanisms within the terms of their mandates. Discussion in this connection occasioned some debate about the relative importance and mutual compatibility of three major themes: monitoring and fact-finding about human rights violations or a given situation; dialogue aimed at encouraging cooperation and securing respect for human rights; and advising and assisting Governments in establishing the capacity to meet international human rights obligations. In this connection, the Bureau recognized that:

**OBSERVATION 11. The specific terms of each mandate can only be decided on a case-by-case basis by the Commission in the light of the requirements of the situation. While it is important to ensure clarity about expectations placed on the special procedures, this cannot be accomplished by imposing any standard or automatic formula. The following observations may however assist the Commission in addressing this important issue in future cases:**

- **Full and effective promotion and protection of human rights by the Commission can rarely be achieved without a combination of ingredients.**

- **Both the Commission, in all aspects of its work, and the special procedures should be constantly conscious of the value of frank and genuine dialogue in discharging their responsibilities.**

- **Given the ultimate objective of enhancing respect for human rights, the identification of opportunities for sound advice and technical assistance to willing Governments should be an integral part of Commission's deliberations, and special procedures should accordingly include in their reports any constructive suggestions to this end based on their expert analysis.**

- **The ultimate relevance and credibility of the Commission, however, depends on the objectivity and quality of its fact-finding, which provides an essential foundation for any genuine dialogue or well-founded advice, and thus represents an essential starting point and a sine qua non for the work of the special procedures.**

### 2. Urgent appeals

26. Another aspect of the work of special procedures to which contributors to the review attached high importance was the established practice of mechanisms, either individually or jointly depending on the nature of the matter, to address to Governments "urgent appeals" seeking immediate clarification and/or relief measures when allegations or concerns of serious violations are brought to their attention.

**OBSERVATION 12. The practice of issuing urgent appeals in appropriate cases is among the special procedures' most vital roles. Effective vigilance by the mechanisms and full and timely cooperation by Governments is critical to the credibility of the commitment by the United Nations to promote and protect human rights in real-life situations.**

**RECOMMENDATION 2. In instances where difficulty is being experienced in securing governmental responses to urgent appeals, the Chair of the Commission should play a role in assisting to obtain an appropriate response at the request of the special procedure concerned.**

### 3. Cross-cutting issues

27. In addressing its broad agenda, the Commission has increasingly recognized the cross-cutting character and importance of a number of crucial human rights challenges, including, for instance, the protection of women's human rights and children's rights. Accordingly, a growing number of Commission resolutions have called on all mechanisms, in the course of discharging their mandates, to give conscious consideration to such dimensions or perspectives.

**OBSERVATION 13. The effective treatment and mainstreaming of cross-cutting human rights issues is crucial to the Commission's efforts to promote and protect all internationally recognized human rights standards in an integrated manner, and the special procedures should implement the Commission's guidance in this regard in a serious, responsive fashion, backed up by adequate support from OHCHR.**

## C. Selecting officeholders and setting basic terms and conditions of service

28. In suggesting means for ensuring the effective performance of the roles and tasks discussed in the foregoing section, contributors to the review attached particular importance: first, to securing the services of individuals possessing high personal and technical qualifications (some suggested that the criteria for Human Rights Committee nominees - "persons of high moral character and recognized competence in the field of human rights" (ICCPR, art. 28) - was an apt formulation); and second, to setting basic terms and conditions of service designed to foster and preserve the independence, objectivity and integrity of the mechanisms. In the light of the various submissions and exchanges on these points, the Bureau has adopted the following general statement of principle as the basic frame of reference for the specific observations and recommendations that follow in this section:

**OBSERVATION 14. In selecting officeholders, and in setting and applying the basic terms and conditions governing the operation of special procedures, the paramount considerations should be those of the personal and technical qualifications of the individuals concerned, and of the independence, objectivity and overall integrity of the mechanisms. These qualities should at all times be demanded of the officeholders, recognized and respected by all actors, governmental and non-governmental, in their dealings with the mechanisms, and strenuously defended and protected by the Commission, which should, at the same time, refrain from any action prejudicial to these principles.**

### 1. Responsibility for appointments

29. Commission practice regarding the assignment of responsibility for appointments to special procedures posts has varied depending on such factors as the nomenclature assigned to the post (e.g. special rapporteur, special representative, independent expert), the mandate and the functions envisaged for the mandate. Considering that there is potential value in having a flexible range of options in this regard, the Bureau does not suggest ironclad rules on this question. However:

**RECOMMENDATION 3. Recognizing that the special procedures are subsidiary creations of the Commission, expected to report to and be otherwise exclusively accountable to it, the Bureau recommends that, as a general rule, appointments to special procedures posts be made by the Chair of the Commission, following consultations with the Commission's Bureau.**

30. The Bureau also recognized the need for the Chair to have the benefit of the best available information on the availability and qualifications of prospective nominees. With this in mind:

**PROPOSAL 2. The Bureau proposes that OHCHR develop and maintain a roster of persons possessing the necessary personal and technical qualifications for potential service as officeholders in Commission special procedures posts. Governments, NGOs and other appropriate parties should be invited to suggest names for possible inclusion in the**

**roster, which would be an important (though not exclusive) resource for the Commission and its Chair in seeking to ensure the highest standards of competence and integrity for the special procedures.**

2. Timing of ECOSOC approval of mandates

31. One factor which has on occasion presented obstacles to the timely implementation of a new mandate has been the need to wait until ECOSOC approval for the mandate is secured. With the Council's substantive session occurring in July each year, this can entail a delay of three or more months before a new mechanism is in a position to begin its work. Such delays can in turn have very serious consequences when urgent or grave human rights concerns are at stake. With this in mind:

**RECOMMENDATION 4. To ensure prompt implementation of special procedures mandates, the Bureau recommends that the Commission consider the following options for a recommendation to ECOSOC:**

- **Option 1. That ECOSOC adopt a general decision authorizing an immediate provisional start to the implementation of all new mandates proposed by the Commission, subject to confirmation during the Council's annual substantive session.**

- **Option 2. That ECOSOC consider the holding of a brief session each spring, immediately following the Commission's sesion, to consider all Commission proposals regarding special procedures mandates.**

- **Option 3. That ECOSOC's regular May organizational session include on its agenda the consideration of the Commission's proposals regarding special procedures mandates.**

3. Duration of mandates and appointments

32. In considering the matter of time-limits regarding special procedures mechanisms - on which a number of suggestions were submitted during the review - it is necessary to distinguish between the duration of the mandate established by the Commission and any limits that might be placed on the tenure of a given individual in a given post. Concerning the duration of mandates, the Bureau is conscious of the need to preserve the Commission's prerogative, when establishing a subsidiary mechanism, to deliberate and decide on each aspect of its decision, including the time-frame for the mandate. That said:

**RECOMMENDATION 5. The Commission's established practice of setting and renewing mandates for thematic mechanisms on the basis of a standard three-year term has proven valuable in ensuring continuity and permitting effective work-planning. The Bureau therefore recommends that this practice be maintained. As regards country-specific mandates, suggestions that the Commission's effectiveness and efficiency might be enhanced by establishing terms exceeding a single year should be given careful consideration on a case-by-case basis in the light of the Commission's assessment of how best to advance the promotion and protection of human rights in the prevailing circumstances.**

33. On term limits for individual appointees, the Bureau agrees with those who suggested that reasonable limits would contribute to maintaining an appropriate degree of detachment and objectivity on the part of officeholders and ensuring a regular infusion of new expertise and perspectives into the special procedures system. With this in mind:

**RECOMMENDATION 6. The Bureau recommends that any individual's tenure in a given mandate, whether thematic or country-specific, be no more than six years. As a transitional measure, officeholders who may have served more than three years when their current mandates expire should be limited to at most three years of further renewals in those posts. All individuals would be eligible for reassignment to other mandates.**

### 4. Privileges and immunities

34. In order to preserve the independence of special procedures mechanisms, considerable attention was paid to the importance of recognizing, respecting and protecting the privileges and immunities that special procedures officeholders enjoy by virtue of their status as experts on mission for the United Nations. The Bureau has concluded that it is neither necessary nor appropriate to offer detailed suggestions on this question which is, after all, a matter of international law, governed by terms of the 1946 Convention on the Privileges and Immunities of the United Nations and any relevant jurisprudence of the International Court of Justice. Nonetheless, it was considered important to offer the following general observation and proposal for the consideration of the Secretary-General:

**OBSERVATION 15. With a view to protecting the independence of the special procedures mechanisms, States should ensure full respect for all privileges and immunities accorded to holders of such posts under international law.**

**PROPOSAL 3. In view of certain incidents brought to the Bureau's attention which might have been avoided if the officeholder had been in possession of a United Nations laissez-passer, the Bureau proposes that the Secretary-General review United Nations practice in this respect and identify steps that might be taken to permit the issuance of such documents to Commission mechanisms.**

### 5. Responsibilities of officeholders

35. While it is crucial for the independence and status of Commission mechanisms to be observed scrupulously, it is no less important for the holders of such posts to uphold diligently the integrity of their offices through the manner in which they discharge their responsibilities. With this in mind, the Bureau considered that the idea of an appropriate code of conduct for the mechanisms warranted careful consideration, and was most encouraged at the support expressed for this idea by representatives of the special procedures. Consequently,

**PROPOSAL 4. The Bureau proposes that the Secretary-General expedite his work on the preparation of a code of conduct for experts on mission, taking into account comments and suggestions from the annual meeting of**

**special procedures. Once established, the code and any allegations of its infringement by an officeholder could be the object of regular examination by the annual meeting of special procedures, with any observations or recommendations in this connection being reported to the Commission.**

6. Compensation and administrative support for mechanisms

36. Many contributors to the review, including representatives of the special procedures themselves, expressed the concern that any form of remuneration (e.g. salary or contract fees for services rendered) could have implications for the independence of the mechanisms. While the Bureau considered that it should be possible to establish a system of remuneration that would nonetheless preserve independence, in the light of the reservations expressed and prevailing resource constraints, the Bureau does not recommend any new measures in this regard at this time.

37. However, the fact that special procedures are not remunerated for their services renders it all the more essential that the administrative support provided to them be as effective and efficient as possible and that the officeholders be fully and promptly compensated for any direct expenses in connection with the fulfilment of their duties. Among the concerns raised in this regard by the representatives of the special procedures, particular emphasis was placed on the need for appropriate insurance coverage during missions, which apparently cannot be adequately reimbursed under existing United Nations rules and regulations. With these concerns in mind:

**PROPOSAL 5. The Bureau urges OHCHR to take all necessary measures to ensure effective and efficient administrative support for the special procedures and full and timely reimbursement for all direct expenses incurred in connection with the fulfilment of their duties. If adminsitrative obstacles in this regard, inter alia in connection with the provision of adequate mission-related insurance, cannot be overcome, consideration might be given to the feasibility of granting officeholders, whenever performing their duties, $1-per-year United Nations staff status - in line with practice in other parts of the United Nations system.**

D. Discharge by the mechanisms of their mandates

38. The basic parameters discussed in the preceding sections provide a general framework within which special procedures mechanisms must embark on the discharge of their mandates. Considering the wealth of observations and proposals submitted during the review, the Bureau concluded that:

**OBSERVATION 16. The effectiveness of the special procedures in fulfilling their responsibilities is highly dependent on ensuring they are able to work effectively with a range of different actors whose cooperation is critical to the discharge of their mandates - notably Governments, non-governmental parties, and other relevant components of the United Nations and other international organizations. The principal challenge in this regard is that of applying and continuing the development of best practices that have evolved out of the experience of**

**the special procedures. An important contribution to this end has been the cooperative effort between OHCHR and the special procedures in developing a manual for the use of all special procedures mechanisms. The Bureau encourages early completion of this valuable resource and its regular updating and improvement.**

1. Working effectively with non-governmental actors

39. More often than not it is information originating in non-governmental circles - media, NGOs, individuals, alleged victims of human rights violations - that provides the initial point of departure for the work of special procedures. Clearly, the operation of the system of special procedures requires the existence of effective and efficient channels and procedures affording the mechanisms access to, and the opportunity to assess the reliability of, relevant information from all potential sources. To this end:

**OBSERVATION 17.**

- **It is important that there be the widest possible grass-roots awareness of the existence, purposes and basic workings of the special procedures. Enhancing such awareness through all possible channels, including the extensive network of United Nations field presences and modern information technology, should be a high priority of OHCHR.**

- **Equally important, there must be the highest possible degree of confidence that groups or individuals will suffer no reprisals or other adverse consequences for having provided information to special procedures. Concerns about discretion and confidentiality in dealings with witnesses have consequently played an important role in the working methods of the special procedures and must continue to do so.**

- **At the same time, it is incumbent on the special procedures to take every possible step and observe all appropriate principles and practices to verify the reliability of all information brought to their attention.**

- **Finally, the credibility of the United Nations and its human rights programme also depends on the confidence of individuals and groups who seek to bring their concerns to its attention that those concerns are in fact receiving appropriate consideration. With this in mind, the Bureau urges that OHCHR put in place procedures to ensure that the initiators of all communications directed to the special procedures receive an appropriate acknowledgement and indication of how their communications are being addressed.**

2. Working effectively with Governments

40. Submissions to the review gave particular attention to the importance of effective working relations between the special procedures and Governments.

particularly regarding country visits which provide a unique opportunity for first-hand information-gathering and dialogue with governmental authorities and non-governmental actors. (See also observation 3.) However, the successful deployment of this instrument requires government cooperation in admitting a mechanism to conduct a mission. In this connection:

**OBSERVATION 18. States could give concrete expression to their pledge, contained in the Charter of the United Nations to cooperate with the United Nations in promoting respect for human rights by ensuring that an invitation is extended to any and all mechanisms of the Commission on Human Rights that demonstrate a reasonably substantiated interest in conducting a mission to the States concerned.**

41. No less important is the need to ensure that such missions can be conducted in a manner consistent with the independent, objective character of the mechanisms and with the imperative of protecting the human rights of all persons concerned. To this end, the special procedures have, on the basis of past experience, developed a set of standard minimum terms of reference which afford the appropriate guarantees of integrity for the mission and all concerned persons (annex II), and which may on occasion need to be supplemented by other understandings specific to the situation at hand. In this connection:

**OBSERVATION 19. All Governments should be encouraged to fully respect the basic terms of reference for missions and otherwise to cooperate fully in securing the conditions necessary to preserve and protect the independence, objectivity and integrity of the mechanism conducting the mission and the rights of all persons whose interests may be implicated.**

42. Much attention was also addressed to possible means for the Commission to encourage Governments to cooperate fully with the Commission and its mechanisms or, in some submissions, to "remedy" or identify appropriate "sanctions" in cases where cooperation is not forthcoming. While a variety of suggestions were advanced, the Bureau has concluded that there is no simple formula for generating the requisite political will and convincing a reluctant Government to fulfil its obligations in this regard. However as the viability and credibility of the Commission turns on this question, it is essential that Governments recognize and fulfil their responsibility to cooperate with the Commission and its mechanisms. To this end:

**RECOMMENDATION 7. At each session of the Commission, there should be conducted regular, focused and systematic deliberations on serious incidents or situations involving a failure or denial of cooperation by Governments with the Commission or its mechanisms. These deliberations should be an integral part of the procedure, proposed in recommendation 9 below, for Commission deliberations on the reports of special procedures.**

43. In a related vein, the Bureau was also encouraged to learn of the general practice of the special procedures to share, whenever possible, advance copies of their reports with the countries concerned.

**OBSERVATION 20. Governments directly concerned should, whenever possible, be given a reasonable opportunity to review the reports of special procedures prior to their finalization and submission to the Commission, and if possible within the time constraints, to provide comments and clarifications. Any such input should also be made available to the Commission, in the form of an addendum to the report where the Government concerned so wishes and time permits.**

### 3. Working effectively with each other, with other relevant components of the United Nations and other international institutions

44. The interdependent and interrelated nature of all human rights underscores the importance of ensuring appropriate coordination and information flow among the Commission's special procedures and other relevant components of the United Nations or other international institutions, inter alia, human rights treaty bodies, field operations of the United Nations, other components of the United Nations Secretariat, United Nations agencies and regional organizations. Thus, with a view to ensuring efficient use of the limited available resources and to enhancing the Commission's effectiveness and its contribution to other important purposes of the United Nations:

**OBSERVATION 21. Every possible measure should be taken, consistent with the relevant mandates, to strengthen and expand the exchange of information and coordination of activities among the Commission's special procedures and other relevant components of the United Nations and other international institutions. Annual meetings of the special procedures have been one especially useful instrument for improving cooperation and coordination among the mechanisms and with other relevant actors. High priority should be given to the continued holding of well-organized meetings with strong support from OHCHR.**

### 4. Working effectively with the High Commissioner for Human Rights and OHCHR

45. By virtue of General Assembly resolution 48/141, the High Commissioner has the principal responsibility for ensuring the progressive development and smooth operation of the types of cooperation and coordination discussed in the preceding section and for providing professional and administrative secretariat backup for special procedures. Prevailing resource constraints, and related managerial difficulties, present major obstacles to the ability of OHCHR to ensure the needed level and continuity of qualified professional support for the special procedures system and to fulfil its coordinating responsibilities. Against this background, the Bureau offers the following observations:

**OBSERVATION 22. While it has been necessary in the circumstances for the High Commissioner to resort to voluntary funding sources to help fulfil her responsibilities, the Bureau agrees with those who asserted that this offers neither an adequate substitute for regular budget funding nor an adequate solution to the shortfall between demands and resources confronting OHCHR. An essential condition for the successful**

**outcome of both the Commission's and the High Commissioner's reviews will therefore be the development of a strategy to secure and administer the regular budget resources needed to support the work of the Commission and its mechanisms (as suggested in proposal 1).**

**PROPOSAL 6. Given the central role played by special procedures in the efforts by the United Nations to promote and protect human rights, the provision of effective support for their activities should be given highest priority in any such strategy. An important element of any such strategy would also be an effective system of annual work-planning for special procedures, based on full cooperation between OHCHR and the mechanisms concerned. Priority should also be given to establishing effective and efficient information management and communications systems, taking full advantage of modern technologies and accessible to all special procedures officeholders.**

**OBSERVATION 23. Finally, it is necessary to underline the importance of continuing and enhancing effective coordination between the special procedures and the substantive activities of the High Commissioner within the framework of her broad responsibilities for promoting, protecting and preventing violations of human rights in all parts of the world.**

### E. Preparation and circulation of reports

46. During the review, concerns were widely expressed about the strains caused by the large volume, the often imprecise format, and the chronically belated distribution of documentation produced by the special procedures system. Some of these strains reflect systemic problems such as resource constraints affecting documentation services, as well as the Commission's heavy agenda.

47. While encouraging ongoing efforts to address those issues, the Bureau has also drawn on a number of proposals submitted to the review in arriving at the following recommendations:

**RECOMMENDATION 8**

**(a) Annual reports to the Commission should continue, wherever possible, to be submitted by the middle of December;**

**(b) Advance, unedited copies of all reports in the original language should be made available to delegations as soon as they are submitted to OHCHR (in the same manner as such copies of ECOSOC reports are made available to Council members);**

**(c) All reports should include an executive summary, no longer than four pages, reflecting all key elements which should form the basis for the Commission's deliberations on the report in question. This document should be structured to highlight the mechanism's principal observations, conclusions and recommendations, and highlight any**

observations or recommendations on the issue of follow-up on prior recommendations and on the question of cooperation of Governments with the mechanism. OHCHR should develop standard formats for such executive summaries for thematic and for country-specific mechanisms;

(d) The executive summaries of all reports should be given the highest priority by the Languages Service and be issued in the framework of a compilation of all such executive summaries. This compilation would include a separate chapter highlighting any observations or recommendations concerning serious incidents or situations involving a failure or denial of cooperation with the Commission or its mechanisms;

(e) Mechanisms could continue to orally supplement or update their annual reports to reflect any relevant developments in the period following submission of the initial report. Where it is necessary to provide such updates in writing, this would be done in a document of no more than two pages unless a longer document is needed to report on a new mission or major new development;

(f) Outside the framework of regular annual reports, special mission reports or reports addressing critical or urgent developments in situations should continue to be submitted for appropriate action and processing, and brought to the Bureau's attention.

F. Utilizing and following up on the work of the special procedures

48. The review revealed particular concern about the discrepancy between the energy and resources invested in establishing and maintaining special procedures mechanisms and the limited and inconsistent manner in which much of their work is addressed by the Commission. Clearly, current Commission practice and procedure in this regard is not commensurate with the role of the special procedures as a cornerstone of United Nations efforts to promote and protect internationally recognized human rights. The following recommendations are thus designed to ensure more serious, focused and systematic deliberations by the Commission on the reports and recommendations of the special procedures.

RECOMMENDATION 9

(a) In addition to formal presentations of special procedures reports and responses of concerned States, the Commission's deliberations in respect of each mechanism's report should include a more focused, systematic dialogue on:

(i) The observations and recommendations of each mechanism;

(ii) The extent to which current and relevant past recommendations have been addressed or followed up by concerned parties; and

(iii) **Any related concerns about the degree of cooperation offered to the Commission and its mechanisms by the directly concerned Governments, including with respect to requests for agreement to receive a direct visit.**

**(b) The executive summary of each mechanism's report (see recommendation 8), and any supplementary/updated information brought to the Commission's attention by the mechanism or by the Government concerned, would afford the principal basis for organizing discussion during these dialogues;**

**(c) In this process, the Government concerned should be encouraged, and offered every reasonable opportunity, to explain its position on the issues at hand;**

**(d) While recognizing that it may not be possible to have all documentation available in the envisaged form for 1999, the Bureau recommends that, in considering the reports of its special procedures at its fifty-fifth session, the Commission take all practicable steps possible to organize the type of dialogue envisaged above.**

49. Concerns were also expressed about the lack of any procedure for ongoing follow-up to the recommendations of the special procedures and the related conclusions of the Commission. In this connection, the Bureau agreed with the view that the Commission's responsibilities for promoting and protecting human rights cannot be adequately performed only in the framework of its annual six-week session. With this in mind:

**RECOMMENDATION 10:**

**(a) The Bureau recommends that OHCHR, in collaboration with the special procedures, prepare and compile in a single document, to be isued in late September each year, a summary report on the progress realized and steps taken to date in connection with the recommendations of the mechanisms and the conclusions of the annual session of the Commission;**

**(b) This document would be reviewed in meetings of the Bureau, held in advance of the human rights debate of the General Assembly. In these meetings, the Bureau would consider any appropriate steps it might take, or advice it might offer to concerned parties, to assist in advancing the process of implementation or follow-through on the recommendations of the mechanisms or conclusions of the Commission. These meetings could include private dialogues with representatives of concerned States;**

**(c) At the conclusion of this annual Bureau review meeting, the Bureau would conduct a public briefing for representatives of all Commission members on any observations or conclusions it may consider appropriate to report.**

50. Finally, many contributors to the review highlighted the need for effective dissemination of the work of the special procedures and the related

conclusions of the Commission to all other potentially interested parties. In this regard, the Bureau agrees with the observation of many contributors to the review that:

**OBSERVATION 24. Every effort should be made to ensure that the results of the work of the special procedures are effectively disseminated in a timely manner and accessible format to all potentially interested parties. In particular:**

- **To United Nations development and other agencies that might be in a position to take advantage of any observations or recommendations for the provision of technical advice or cooperation to assist interested Governments in developing or enhancing their capacity to protect internationally recognized human rights;**

- **To all other components of the United Nations or other international institutions for which the work of the mechanism might be relevant, including relevant field offices or operations;**

- **To non-governmental organizations, academia, other interested groups and individuals, and the general public, both internationally and especially within the country concerned.**

**As with the tasks discussed in section D above, principal responsibility for such dissemination efforts resides with OHCHR which should be strongly supported in this regard by other parts of the United Nations.**

## III. PROCEDURE ESTABLISHED BY ECOSOC RESOLUTION 1503 (XLVIII)

51. The 1503 procedure was established in 1970 as a global petition or "communications" mechanism, affording an opportunity for individuals and groups in all parts of the world to bring to the attention of the United Nations concerns about alleged human rights violations of all types. The process initiated by the receipt of such communications involves four stages of deliberations, all confidential, and conducted first at the Sub-Commission level (Working Group on Communications and Sub-Commission plenary) to determine whether to transmit a given situation to the Commission for consideration; and second at the Commission level (Working Group on Situations and Commission plenary) culminating in decisions by the Commission whether or not to maintain a situation under review or take other appropriate action.

52. The 1503 procedure has over the years provided a valuable vehicle for the Commission to take action on a number of serious human rights situations. (Situations in 75 different countries have been brought to the Commission's attention under this procedure.) However, as highlighted in many submissions to the review, it has - especially with the emergence over the past three decades of a wide range of other processes (public thematic and country mechanisms, human rights treaty procedures) - come to be regarded as an increasingly ineffectual, highly cumbersome means for addressing situations warranting the Commission's attention. Particular concerns were expressed about the complex process preceding the Commission's deliberations on any

given situation and the outdated nature of many communications that find their way through the system. The interval between receipt of a communication and its referral to the Commission can range from a minimum of 12 months to some three years. It was also observed that, notwithstanding the complex screening process, situations hardly worthy of attention are occasionally presented to the Commission, with disproportionate consequences for the Governments concerned and negative implications for the credibility of the Commission. Finally, it was observed that the Commission's deliberations have frequently been devoid of either serious substantive consideration of the human rights issues at hand or of genuine, constructive dialogue on how to address such issues.

53. While taking these concerns into account, the Bureau agrees with those who submitted that:

**OBSERVATION 25. An effective global communications process could continue to provide an important channel of redress, especially for groups and individuals in countries not party to treaty-based communications procedures and for members of vulnerable groups who may otherwise have difficulty securing access to international human rights institutions. Such a process would also ensure an avenue to address concerns about human rights violations not fully covered by the Commission's network of thematic mechanisms. And, finally, the Bureau agreed that there would be value in maintaining the option of a confidential process - insofar as this helps to secure constructive engagement by Governments concerned in genuine dialogue and cooperation with the Commission. Achieving such objectives effectively and efficiently would, however, require a significant overhaul and streamlining of the existing 1503 procedure.**

54. With these considerations in mind:

**RECOMMENDATION 11. The Bureau recommends that the Commission's confidential 1503 procedure be amended in the following ways:**

**(a) Deliberations to select situations which should be brought to the attention of the Commission should be conducted by a single body, a Committee on Situations, comprised of five independent experts appointed each year by the Chair of the Commission (no individual to serve more than three years), and meeting twice per year:**

**(i) First, at the beginning of September to examine monthly summaries of communications prepared by the secretariat, originals of communications and any government replies received to date. At that time the Committee would decide which communications it should refer to States for clarification, requesting that any replies be submitted on time for the next meeting; and**

**(ii) Second, in January, to examine dossiers on the situations concerned, including original communications, replies received from Governments and any additional relevant information from other**

United Nations sources, including treaty monitoring bodies and special procedures. The Committee would then determine whether or not to refer the situations before it to the Commission for its consideration, and prepare a summary report identifying the main issues of concern and suggested ways of addressing those concerns, but would not make recommendations in the form of draft resolutions or decisions;

(b) Deliberations at the Commission level would also involve two phases:

(i) A closed meeting at the earliest possible stage in the session, to which the Governments concerned would be invited, to undertake a meaningful dialogue with the Commission; and

(ii) A second closed meeting, towards the conclusion of the session, and in the presence of the Governments concerned, to decide on appropriate action, including a decision whether to continue or discontinue consideration of the matter within the confidential procedure, or whether to take up the matter in the Commission's public proceedings - which should be the principal option in cases in which government cooperation has been inadequate;

(c) At the conclusion of a session, the Chair of the Commission should announce publicly the names of the countries considered, the main issues of concern and the course of action which the Commission has decided to take;

(d) OHCHR would continue to play a crucial role in providing the necessary support for the procedure to ensure effective performance of all the necessary tasks, inter alia:

- Ensuring appropriate acknowledgement, and referral to concerned Governments, of communications received;

- Sifting out communications that appear to be manifestly unfounded;

- Ensuring that Governments concerned are kept appropriately and punctually advised of any decision taken in the Committee that requires their attention;

- Preparing material/dossiers for deliberations by the Committee and the Commission.

## IV. SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

55. Created in 1947, the Sub-Commission on Prevention of Discrimination and Protection of Minorities has played a crucial, historic role in the development and execution of the efforts of the United Nations to promote

and protect human rights. It has been a key engine in the policy and standard-setting work of the United Nations human rights programme, bringing many emerging issues requiring international attention to the fore, preparing initial drafts for a number of important instruments, and contributing to the development of the Commission's thematic mechanisms. As well as performing its functions under the 1503 confidential procedure, it has made significant contributions in mobilizing international concern about situations of serious human rights violations. In this connection, the Sub-Commission, and particularly some of its working groups, have been, and remain, valuable forums for individuals and groups to bring their human rights concerns to the attention of the United Nations. Contributions to this review revealed broad and genuine appreciation for all of these accomplishments and contributions on the part of the Sub-Commission.

**OBSERVATION 26. Given the important contribution that the Sub-Commission has made to the efforts of the United Nations in the promotion and protection of human rights, the Bureau is convinced that an institution of this type can and should continue to play an important role as a subsidiary expert mechanism of the Commission.**

56. At the same time, widespread and strong concerns were expressed that, as the United Nations human rights standard-setting work has become increasingly focused on implementation-oriented action, and as other components of the United Nations human rights machinery have developed, it has become increasingly difficult to discern the unique and specific value-added role that an institution like the Sub-Commission should play. Particular concerns were expressed about the Sub-Commission's diffuse focus and its tendency to take on, or seek to take on, a seemingly haphazard proliferation of projects, often overlapping with the Commission without tangible benefits. Concern was also expressed about the frequently politicized character of the Sub-Commission's debates and of its working methods, which bear closer similarity to those of the Commission than to what might be expected of a body of independent experts. Against this background:

**OBSERVATION 27. As successive, incremental efforts at improving the Sub-Commission's working methods do not appear to have resolved some very fundamental concerns about this institution, the Bureau agrees that fundamental reform measures must be considered. The need for doing so in the context of this review is all the more compelling given that the Sub-Commission is by far the most expensive of the Commission's subsidiary mechanisms, the cost of its annual session being higher than that of the Commission itself. The recommendations that follow are designed to address these concerns, while preserving and enhancing the Sub-Commission's unique strengths as a body of independent experts and the opportunities it offers as a forum for concerned groups to bring their human rights ideas and concerns to the attention of the international community.**

**RECOMMENDATION 12.**

**(a) Reflecting the role of the Sub-Commission in assisting the Commission to address a broad range of human rights issues, it should be renamed "the Sub-Commission on the Promotion and Protection of Human Rights";**

(b) Reflecting the proposed sharpening of the Sub-Commission's role as an independent expert body focusing its attention on priorities determined by the Commission:

(i) The membership of the Sub-Commission should be reduced to 15 members, nominated by the Chair of the Commission in consultation with the Bureau, on the basis of their expert qualifications, to serve a four-year term, renewable for a maximum of one additional four-year term. To preserve the image of the Sub-Commission as an independent expert body, no member should be concurrently employed in the executive branch of their country's Government;

(ii) The length of annual sessions of the Sub-Commission should be reduced to two weeks;

(c) The Sub-Commission's work and priorities should be based on tasks entrusted to it by the Commission on Human Rights, with the principal focus on the elaboration of studies, research and expert advice at the request of the Commission. The Commission should regard the Sub-Commission's experts as its foremost resource for the performance of such assignments, rather than appointing others to undertake expert research and analysis; and in considering the assignment of projects to the Sub-Commission, the Commission might consider relevant proposals from the High Commissioner for Human Rights, from other United Nations human rights institutions and from the Sub-Commission itself;

(d) The Sub-Commission's working methods in respect of its research and study projects should, consistent with the independent expert character of the body, entail a well-prepared, thorough peer-review process culminating in an analytical report to the Commission comprising the final text of the study in question, any agreed recommendations on further steps and a summary of major observations of members of the Sub-Commission. This approach would preclude the need for negotiating traditional resolutions for submission to the Commission. While the Sub-Commission's deliberations should provide opportunities for interested Governments, international organizations and NGOs to provide input into this process, the experts should also be prepared to dedicate adequate time to private deliberations on their projects, inter alia in the framework of sessional working groups such as the existing working group on the administration of justice;

(e) Recognizing the important opportunities the Sub-Commission and some of its subsidiary bodies play in affording a public forum for concerned parties to raise their human rights concerns:

(i) The Sub-Commission should continue to conduct an annual debate on human rights violations in all parts of the world. However, rather than leading to the

**negotiation of resolutions, this debate should be reflected in a summary to the Commission as part of the Sub-Commission's annual report;**

**(ii) The Sub-Commission's inter-sessional Working Groups on Minorities and on Indigenous Populations should continue to perform the valuable work they are engaged in, the latter until such time as the question of its future status is resolved in the context of the Commission's deliberations on a permanent forum for indigenous people in the United Nations system. The question of the Working Group on Contemporary Forms of Slavery is addressed in recommendation 1 above;**

**(f) As regards transitional arrangements associated with these proposed changes, the Bureau recommends that the Commission devise a transitional process aimed at bringing the recommended reforms fully into effect for the fifty-second session of the Sub-Commission in the year 2000.**

## V. STANDARD-SETTING WORKING GROUPS OF THE COMMISSION

57. One of the major accomplishments of the United Nations in the field of human rights has been the elaboration of a wide range of conventions, declarations and other instruments setting internationally agreed principles, norms and standards for the protection of human rights. Some such instruments have been completed over the past 50 years, a great many based on texts developed by the Commission. The Commission's principal mechanism for preparing such texts has been that of an ad hoc open-ended working group in which all Commission members, observer Governments and NGOs are given an opportunity to participate.

58. While the human rights standard-setting activities of the United Nations have entered a relatively advanced, mature stage, with emphasis increasingly being placed on implementation-oriented activities, important drafting exercises remain to be completed (see annex III). Given the importance of these exercises, contributors to the review emphasized the importance of assessing and enhancing the effectiveness of its ad hoc working groups. The call for doing so was further reinforced by the recognition of the constant emergence of new issues requiring international attention and the consequent need for the Commission to have the most effective possible working methods in place to undertake any new standard-setting challenges that might be identified.

59. Two particular concerns in this regard were highlighted during the review. First there was a concern to ensure that decisions to undertake any standard-setting exercise, which can involve a considerable commitment of time and resources by the United Nations and its Member States, are founded on the clearest possible appreciation of the purposes and prospective utility of the instrument envisaged, and the prospects of achieving those aims. In this connection, the Bureau's attention was drawn to the guidelines set out in General Assembly resolution 41/120 which calls for United Nations bodies and Member States to bear in mind in developing international human rights

instruments, inter alia, that they should: (a) be consistent with the existing body of international human rights law; (b) be of fundamental character and derive from the inherent dignity and worth of the human person; (c) be sufficiently precise to give rise to identifiable and practicable rights and obligations; (d) provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and (e) attract broad international support. It was also observed that, in advance of launching a working group, effective preparatory work aimed at addressing these and other relevant questions and at establishing a draft text that would provide the basis for discussions, could contribute significantly to the productivity of any new standard-setting exercise.

60. The second major concern raised during the review concerned the widely perceived need for parameters and working methods that would contribute to ensuring the most efficient, cost-effective possible approach to the Commission's standard-setting activities and to overcoming obstacles to this end and to the achievement of progress in establishing widely accepted and urgently needed human rights instruments.

61. With these considerations in mind, the Bureau has agreed on the following recommendations in respect of standard-setting working groups of the Commission:

**RECOMMENDATION 13.**

**(a) Before referring any matter to a working group, the Commission on Human Rights should, where the needed groundwork has not been otherwise laid, request the Sub-Commission to undertake a study on the question at hand and prepare a draft text of the instrument envisaged. Among the issues to be addressed in any such study, and in the Commission's deliberations on whether to proceed, careful consideration should be given to the purposes of any drafting exercise and to the guidelines set out in General Assembly resolution 41/120;**

**(b) In creating any standard-setting working group, the Commission should consider and agree on a specific time-frame within which the group would be called upon to complete its task. This could vary depending on the complexity of the issue and the nature of the instrument (e.g. a procedural protocol might reasonably be completed within two or three years), but in any event the established time-frame should not exceed five years. If, by the end of its mandate, the working group has not been able to achieve a result, the Commission should set a period of reflection (such as one or two years) before any extension is provided;**

**(c) Regarding the question of concluding a standard-setting exercise with or without a vote, it should be borne in mind that there is no rule of procedure requiring the Commission on Human Rights, ECOSOC or the General Assembly to adopt standard-setting instruments by consensus, and there are indeed examples where consensus has not been achieved. Of course, all efforts should be made at reaching consensus;**

(d) Finally, all working group chairs (whose terms should be linked with that of the working group) should have standing authority to undertake, between working group meetings, informal contacts and consultations with a view to advancing progress in respect of the working group's mandate. Results of such consultations should be communicated to concerned delegations on a timely basis and at the start of each session.

Annex I

CURRENT SPECIAL PROCEDURES AND OTHER AD HOC MECHANISMS

A. Thematic mandates

| Title and mandate | | Established in | Latest Commission resolution/decision |
|---|---|---|---|
| Special Rapporteurs of the Commission on Human Rights | Extrajudicial, summary or arbitrary executions | 1982 | 1998/68 |
| | Torture and other cruel, inhuman or degrading treatment or punishment | 1985 | 1998/38 |
| | Religious intolerance | 1986 | 1998/18 |
| | Use of mercenaries | 1987 | 1998/6 |
| | Sale of children, child prostitution and child pornography | 1990 | 1998/76 |
| | Right to freedom of opinion and expression | 1993 | 1998/42 |
| | Contemporary forms of racism, racial discrimination, xenophobia and related intolerance | 1993 | 1998/26 |
| | Independence of judges and lawyers | 1994 | 1998/35 |
| | Violence against women | 1994 | 1998/52 |
| | Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes | 1995 | 1998/12 |
| | Effects of foreign debt on the enjoyment of human rights | 1998 | 1998/24 |
| | Right to education | 1998 | 1998/33 |

| Title and mandate | | Established in | Latest Commission resolution/decision |
|---|---|---|---|
| Independent experts | Structural adjustment policies | 1997 | 1998/102 |
| | Human rights and extreme poverty | 1998 | 1998/25 |
| | Restitution, compensation and rehabilitation for victims of grave violations of human rights | 1998 | 1998/43 |
| | Right to development | 1998 | 1998/72 |
| Representative of the Secretary-General | Internally displaced persons | 1992 | 1998/50 |
| Working groups of the Commission | Enforced or involuntary disappearances | 1980 | 1998/40 |
| | Arbitrary detention | 1991 | 1998/41 |
| | Human rights of migrants | 1997 | 1998/16 |
| | Possible establishment of a permanent forum for indigenous people | 1998 | 1998/20 |
| | Right to development | 1998 | 1998/72 |
| Thematic mandates established by the Sub-Commission | Working Group on Contemporary Forms of Slavery | 1974 | 1996/61 |
| | Working Group on Indigenous Populations | 1982 | 1998/13 |
| | Working Group on Minorities | 1995 | 1998/19 |

B. Country specific mandates

| Title and mandate | | Established in | Latest Commission resolution/decision |
|---|---|---|---|
| Special Rapporteurs | Situation of human rights in Afghanistan | 1984 | 1998/70 |
| | Situation of human rights in Iraq | 1991 | 1998/65 |
| | Situation of human rights in Myanmar | 1992 | 1998/63 |
| | Situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia | 1992 | 1998/79 |
| | Situation of human rights in the Palestinian territories occupied since 1967 | 1993 | 1998/1 |
| | Situation of human rights in Equatorial Guinea | 1993 | 1998/71 |
| | Situation of human rights in the Sudan | 1993 | 1998/67 |
| | Situation of human rights in the Democratic Republic of the Congo (former Zaire) | 1994 | 1998/61 |
| | Situation of human rights in Burundi | 1995 | 1998/82 |
| | Situation of human rights in Nigeria | 1997 | 1998/64 |
| Special representatives of the Commission | Situation of human rights in the Islamic Republic of Iran | 1984 | 1998/80 |
| | Situation of human rights in Rwanda | 1994 | 1998/69 |

| Title and mandate | | Established in | Latest Commission resolution/decision |
|---|---|---|---|
| Technical cooperation programme | Special representative of the Secretary-General on the situation of human rights in Cambodia | 1993 | 1998/60 |
| | Independent expert on the situation of human rights in Somalia | 1993 | 1998/59 |
| | Independent expert on the situation of human rights in Haiti | 1995 | 1998/58 |
| 1503 procedure | Independent expert on the situation of human rights in Chad | 1995 | Confidential procedure |

## Annex II

## TERMS OF REFERENCE FOR FACT-FINDING MISSIONS BY SPECIAL RAPPORTEURS/REPRESENTATIVES OF THE COMMISSION ON HUMAN RIGHTS

During fact-finding missions, special rapporteurs or representatives of the Commission on Human Rights, as well as United Nations staff accompanying them, should be given the following guarantees and facilities by the Government that invited them to visit its country:

(a) Freedom of movement in the whole country, including facilitation of transport, in particular to restricted areas;

(b) Freedom of inquiry, in particular as regards:

(i) Access to all prisons, detention centres and places of interrogation;

(ii) Contacts with central and local authorities of all branches of government;

(iii) Contacts with representatives of non-governmental organizations, other private institutions and the media;

(iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfil the mandate of the special rapporteur; and

(v) Full access to all documentary material relevant to the mandate;

(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings;

(d) Appropriate security arrangements without, however, restricting the freedom of movement and inquiry referred to above;

(e) Extension of the same guarantees and facilities mentioned above to the appropriate United Nations staff who will assist the special rapporteur/representative before, during and after the visit.

Annex III

STANDARD-SETTING WORKING GROUPS

The following standard-setting working groups are currently operating
ıder mandate from the Commission:

- Open-ended working group to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (established in 1992; latest Commission resolution: 1998/34);

- Open-ended working group on the elaboration of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (established in 1994; latest Commission resolution: 1998/76);

- Open-ended working group on the elaboration of a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts (established in 1994; latest Commission resolution: 1998/76);

- Open-ended working group to elaborate a draft United Nations declaration on the rights of indigenous peoples (established in 1995; latest Commission resolution: 1998/14).

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